



Independent Contractor Status

What Factors Determine a Worker's Employment Status

Many employers have difficulty distinguishing the employment status of workers. Should the worker be reported as an employee or treated as an independent contractor?

One of the more common practices is to enter into a mutual agreement (often written) between the employer and the worker stating the worker's services are to be performed as an independent contractor and not an employee. However, an agreement or contract alone does not make the worker independent. In fact, state law specifically voids any agreement by an individual to waive or release rights to unemployment insurance (UI) benefits. Scrutiny of the specific facts related to each relationship is required to assure the form of a service arrangement does not obscure the substance of the arrangement.

The UI Division uses a two-part test to determine a worker's employment status. The individual is considered an employee unless it is shown to the division's satisfaction that both of the following conditions are met:

- #1. The individual is customarily engaged in an independently established trade or business of the same nature as that which is being contracted. The trade or business is created and exists apart from a relationship with a particular employer and does not depend on a relationship with any one employer for its continued existence; **and**
- #2. The individual is free from control or direction over the means of performing the service. If the employer retains the right

to control and direct the individual, even if the employer does not choose to exercise his right to control and direct, the individual is an employee.

A number of "factors" are used to aid in the analysis of each case. The importance of a factor varies depending on the occupation and the factual context in which each service is performed. For example, some factors do not apply to certain occupations and, therefore, would not be given any weight when those occupations are evaluated.

Some factors used for Test #1 (above) include:

- The individual has their own place of business separate from the employer's.
- The individual has a substantial investment in tools, equipment or facilities.
- The individual regularly performs the same service for other clients.
- The individual is in a position to realize a profit or suffer a loss.
- The individual advertises their service.
- The individual has obtained the required business and trade licenses.

Some factors used for Test #2 (above) include:

- The individual is required to comply with instructions or, the employer retains the right to require compliance with the instructions.



continued on back



Independent Contractor Cont.

- Training an individual, requiring attendance at meetings, or other controls.
- Requiring the service to be performed on the employer's premises.
- Requiring services to be performed personally and not assigned to others.
- The establishment of set hours of work or on the number of hours worked.

If both tests are satisfied, demonstrating the individual is independently established and free from control and direction, the department would not require the employer to cover the individual for UI

contributions. If the individual is deemed an employee, the services are considered wages and the employer is liable for contributions. This is a short explanation of a complex subject. Our hope is for you to be aware of these requirements so you can manage your businesses more effectively and be in compliance with state law. If you have any questions on this subject you may contact us at 1-800-222-2857 ext. 9400.

For a complete text of the Utah Administrative Code outlining the factors for determining independent contractor status please go to the following website:

<http://www.rules.utah.gov/publicat/code/r994/r994-204.htm#T8>

CUBS (Comprehensive Unemployment Benefits System) Implementation

More Information - Easier Access

A new computer system for UI benefit payments will be implemented for the New Year. What does this mean for employers?

All forms sent to employers will have a different look. Employers will receive a form showing wages used/ benefit costs and a separate form requesting separation information. The "Employer Notice of Claim Filed" has been modified to make it easier for employers to provide information. Decision letters will now provide **more**

detailed information as to why benefits were allowed or denied.

We will also be storing initial requests for information so we can verify the address of record on any form that is mailed to you.

This new system will **improve communication** with employers and claimants and **provide greater efficiency** for our workers to work with you.

Quarterly UI Trust Fund Balance

The UI Trust Fund balance has significantly improved the last two years. The increase is primarily due to a reduction in unemployment rates (less UI benefits paid out) and a general increase in contribution rates. This recent improvement has resulted in slightly lower contribution rates for many employers in rate year 2006.

